AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

53TACD2025

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") brought by [redacted] ("the Appellant") pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended ("TCA 1997") against the refusal by the Revenue Commissioners ("the Respondent") to refund an overpayment of income tax in the amount of €5,663.20 for the tax year 2019, on the ground that the repayment was sought outside the statutory timeframe.

2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 8 October 2020, the Appellant submitted her Form 11 income tax return for 2019 via the Respondent's Revenue Online Service (ROS). She sought to claim relief for PRSA contributions paid by her during the year. However, the relevant section of the return was not fully completed by her and therefore she was not granted relief.

4. On 5 September 2024, the Appellant sought to amend her return. However, on 15 October 2024, the Respondent refused her application for a refund of €5,663.20, on the basis that the claim had been made more than four years after the chargeable period.

5. On 25 October 2024, the Appellant appealed against the Respondent's refusal to the Commission. On 29 November 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without an oral hearing, and the Appellant submitted additional documentation. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation

6. Section 865 of the TCA 1997 provides that

> "*(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.*
>
> *[…]*
>
> *(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –*
>
> > *(a)in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,*
> >
> > *(b)in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and*
> >
> > *(c)in the case of claims made –*
> >
> > > *(i)under subsection (2) and not under any other provision of the Acts, or*

(ii)in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates."

Submissions

Appellant

7. In written submissions, the Appellant stated that

"*I submitted my Self Assessment Income Tax Form 11 for tax year 2019 on 8th October 2020.*

My age during 2019 was [redacted] *which entitled me to claim up to 25% relief on a PRSA payment. My net relevant earnings were €56,631. This meant I was entitled to claim relief on up to €14,158 paid into a PRSA.*

I paid €14,158 into my PRSA that year and claimed €14,158 PRSA relief through the form. As I paid tax at the higher rate of 40% on part of my earnings that year, this should have generated relief of €5,663.

That claim reference figure of €14,158 appears in three locations on my Form 11 for 2019 including what I regarded as the critical and most relevant box that read:

Total amount of Retirement Annuity Contract/PRSA/QOPP relief claimed in 2019

This was not taken into account in the Revenue assessment of my tax due and was not granted at the time.

On 30th August 2024 I queried this with Revenue through ROS My Enquires and received this response: "Having reviewed the initially submitted return I can see that the claim for relief on PRSA was not claimed correctly on the form 11. The relief calculator was not fully completed."

The amount was subsequently corrected by Revenue, but then disallowed.

I received a letter from Revenue ref [redacted] *on 15th October 2024 saying that a claim for repayment of tax must be submitted within 4 years of the end of that year and as this was after that it is precluded.*

I feel it is very unfair that Revenue are relying on the four year rule within TCA 1997 S865 to disallow my claim, treating it as though my claim had not been made within the time frame required when it had.

My view is that my claim was made on time, but was effectively ignored by Revenue due to a very convoluted Revenue requirement within Form 11 in 2019 where the figure being claimed needed to be entered multiple times to be regarded as 'fully completed' and one oversight to repeat the figure was deemed incomplete and disregarded as though never claimed. The critical information that Revenue needed to know if my claim was within the maximum amount allowable was: my age and my net relevant earnings, both of which I had entered on the form, i.e. that calculation was available to Revenue within the form.

A central tenet of our tax system is that it is fair. Fair should include access to claim forms that are efficient and logical from the tax payer perspective. This would mean ensuring that Form 11 does not dismiss claims outright when the amount being claimed is required to be repeated sufficient times to activate background calculations programmed into the form to enable activation of a relief, particularly so when background calculations are not apparent to the person completing the form.

At the very least an error message or a validation check should appear when a tax payer enters an amount in several places but not in one of the required places to allow it to be calculated. Had such a prompt appeared (as typically does in most online data processes), then I could have identified that there was one final step to go to complete my claim. This is basic fairness.

I note that the Revenue Customer Service Charter under Information and assistance states:

> *You can expect:*
>
> *to be given the necessary information and all reasonable assistance to enable you to clearly understand and meet your tax and customs obligations and to claim your entitlements and tax credits.*

I believe this is a case where reasonable assistance was not given in the form in the absence of any error message or validation check and as a result I was denied my claim without being made aware of that.

I feel the correct regulation for this matter is S959AA of TCA 1997 … This provides for an exception 'at any time' to the four year rule where there is a need for Revenue to correct an assessment calculation error.

[…]

In summary, I feel that the omission was on Revenue's side, where that element of Form 11 was unnecessarily convoluted and without an error message or validation check relating to claim amounts already entered. The material facts relating to the claim were properly disclosed by me. I belief that it was a reasonable expectation on my side that the amount was being taken into consideration in the calculation of my tax due for that year."

8. In additional submissions, the Appellant submitted screenshots of her Form 11 return for 2019, together with comments thereon.

Respondent

9. In written submissions, the Respondent stated that

"*The Appellant submitted Income tax return (Form 11) for the year 2019 on 08/10/2020, through Revenue Online Service (ROS). An amount has been entered on return, under designated box for 'PRSA pension contribution paid'. However, pension contribution calculator has not been completed, and for that reason, the relief did not take an effect. Due to restrictions applicable for this relief, it is mandatory to complete pension contribution calculator on return, to validate the amount of relief.*

We received a request from [the Appellant], for return amendment on 05/09/2024, where [she] notified us about the omission. The return was amended on her behalf, to correct the error on original return.

This intervention has resulted in a refund, in amount of €5,663.20, which has been disallowed by Revenue as claim has been made outside 4-year timeframe, as imposed by legislation.

This is the decision that the Appellant is appealing.

The legislation covering this matter is Section 865, subsection 4 of the TCA 1997. A valid claim for the repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made within 4 years after the end of the chargeable period to which the claim relates.

[…]

The chargeable period for the year 2019 is 1st January 2019 to the 31st December 2019. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2019 tax year, a request for an amendment of the return would have to have been submitted on or before the 31st December 2023.

As the 2019 tax return was amended outside of the 4-year limit imposed by Section 865 of the Acts, Revenue is precluded from allowing refund or offset of the overpaid tax."

Material Facts

10. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:

    10.1. On 8 October 2020, the Appellant submitted her Form 11 income tax return for 2019 via ROS. She sought to claim a refund for PRSA contributions made by her. However, she did not complete the 'pension contribution calculator' section of the return, and no relief was granted to her.

    10.2. On 5 September 2024, the Appellant sought to amend her 2019 return. On 15 October 2024, the Respondent refused her application for a refund of €5,663.20, on the basis that the claim had been made more than four years after the chargeable period.

Analysis

11. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her claim for a refund of tax. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*"

12. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. However, section 865(4) states *inter alia* that "*a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made… within 4 years, after the end of the chargeable period to which the claim relates*" (emphasis added). In this appeal, the relevant tax year was 2019, and therefore the repayment claim had to be made by 31 December 2023.

13. The Appellant sought to amend her 2019 return in September 2024, and her claim for a refund was refused by the Respondent on 15 October 2024. Consequently, the Commissioner is satisfied that the application for a refund was made after the four-year timeframe prescribed by section 865(4) of the TCA 1997.

14. In her submissions to the Commission, the Appellant argues that she inputted the relevant information on her Form 11 return, which was overly complicated, and that it was unfair of the Respondent to refuse her claim when it had the relevant information. She also argues that she had a "*reasonable expectation*" that she would be granted the relief, and contends that section 959AA of the TCA 1997 allows for the amendment of a return at any time to correct an error in calculation or a mistake of fact on the assessment where it does not accurately reflect the facts disclosed by the taxpayer.

15. The Commissioner considers that the first point to note is that the Appellant made a self-assessment to income tax for 2019, and that as a result the onus was on her to ensure that her Form 11 was accurately and fully completed, and that the subsequent assessment to income tax was correct. The Appellant has not denied that she did not fully complete the Form 11 return, and nor does it appear that she made any attempt to amend the return within the four year timeframe for the amendment of self-assessments prescribed by section 959V of the TCA 1997.

16. Furthermore, the Commissioner considers it important to confirm the limitations on his jurisdiction when determining appeals such as this. In *Lee v Revenue Commissioners* [2021] IECA 18, the Court of Appeal (Murray J) considered the jurisdiction of the Commission's predecessor and stated that

> "*76. The jurisdiction of the Appeal Commissioners …is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or*

estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

17. Consequently, the Commissioner considers it clear that his role is limited to considering and applying the relevant legislation in this appeal. He does have the jurisdiction to consider whether the Appellant had a "*reasonable expectation*" that she would be granted the income tax relief, nor does he have the jurisdiction to consider whether the Respondent's Form 11 income tax return regime is fair or whether it breaches the terms of the Respondent's Customer Service Charter.

18. Furthermore, the Commissioner does not have the jurisdiction pursuant to section 959AA of the TCA 1997 to direct the amendment of her 2019 return. It is clear that that provision entitles the Respondent to amend an assessment outside of the four-year timeframe in certain circumstances; it does not grant an equivalent entitlement to a taxpayer. The Commissioner is satisfied that any purported direction by him to the Respondent to amend an assessment under section 959AA would be akin to an order of *mandamus* granted by the High Court in judicial review proceedings, and it is clear from *Lee v Revenue Commissioners* [2021] IECA 18, as quoted above, that the Commissioner has no such jurisdiction.

19. Therefore, in conclusion, the Commissioner is satisfied that the Appellant's application for a refund of tax was made outside of the four-year timeframe prescribed by section 865(4) of the TCA 1997. He is further satisfied that the timeframe under section 865(4) is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it.

20. The Commissioner appreciates that this determination will be disappointing for the Appellant, and he has genuine sympathy for her, as she has lost out on a refund of tax as a result of an honest mistake. However, as set out herein, his jurisdiction is limited to considering and applying the relevant statutory provisions, and consequently he determines that the appeal cannot succeed.

Determination

21. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant's application for a refund of income tax in the amount of €5,663.20 for 2019.

22. This Appeal is determined in accordance with Part 40A of the TCA 1997 in particular sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

23. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

24. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
30 January 2025